

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOHN STAMPER,

Plaintiff,

v.

Case No. 06-C-1291

WISCONSIN CENTRAL, LTD., and
ROY SINDELAR

Defendants.

ORDER

Plaintiff has filed a Rule 7.4 motion for relief from the disclosure requirements of Fed. R. Civ. P. 26(a)(2)(B). It asserts that two of its experts are treating physicians and thus not subject to the rule. The defendant opposes the motion, arguing that while the physicians were originally treating doctors, their opinions have been solicited specifically for this litigation and compensation has been offered them. Accordingly, they should not be treated differently than other retained experts.

Fed. R. Civ. P. 26(a)(2)(B) requires an expert to file a written report “if the witness is one retained or specially employed to provide expert testimony in the case.” I do not find that either of the experts who are the subject of the instant motion are “retained” for purposes of the rule. The opinions they will apparently offer do extend beyond the opinions necessary for current and past medical treatment, but such opinions are commonly rendered by treating doctors who must evaluate their patients’ future prospects. Moreover, the evidence cited by the defendant does not suggest that they are to be compensated for their opinions in the traditional expert fashion. (WCL Response, Ex.

A.) The letter cited by the defendant merely suggests that plaintiff's counsel would be willing to reimburse the physicians for their costs and any standard fees. Accordingly, I conclude that Drs. Lumsden and Mussen may be considered plaintiff's treating physicians, and as such the requirements of Rule 26(a)(2)(B) do not apply. The motion is therefore **GRANTED**.

SO ORDERED this 9th day of July, 2008.

s/ William C. Griesbach
William C. Griesbach
United States District Judge